

The Honorable Alan A. McDonald

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Attorneys for Defendants

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

STERLING INTERNATIONAL, INC., a  
Washington corporation,

Plaintiff,

v.

VIRTOOLS CANADA, INC., a Canadian  
corporation, and VIRTOOLS, S.A., a  
French corporation,

Defendants.

**No. CV-06-059-AAM**

**DEFENDANTS' ANSWER,  
AFFIRMATIVE DEFENSE  
AND COUNTERCLAIM**

Defendant Virtools Canada, Inc. ("Virtools Canada"), and Virtools S.A. ("Virtools"), by and through their undersigned counsel, answer the numbered paragraphs of Plaintiff's Complaint as follows:

1.1 Defendants admit that Sterling International, Inc. ("SII"), is a Washington corporation that does business in Spokane County, Washington.

DEFENDANTS' ANSWER, AFFIRMATIVE DEFENSE  
AND COUNTERCLAIM - 1  
Case No. CV-06-059-AAM

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1 1.2 Virtools Canada admits that it is a Canadian corporation. Virtools  
2 Canada denies that it does business in Spokane County, Washington.

3  
4 1.3 Virtools admits that it is a French corporation and the parent  
5 company of Virtools Canada, Inc. Virtools denies that it does business in  
6 Spokane County, Washington.

7  
8 1.4 Defendants admit that the named parties have diverse citizenship as  
9 defined by 28 U.S.C. § 1332(a)(2). Defendants deny that the amount in  
10 controversy exceeds \$75,000.

11  
12 1.5 Defendants deny that the Eastern District of Washington is an  
13 appropriate venue for this action on grounds previously asserted in Defendants'  
14 FRCP 12(b)(3) motion to dismiss. Without waiving that argument, however,  
15 Defendants admit that the Eastern District of Washington is otherwise an  
16 appropriate venue for this action.

17  
18 2.1 Plaintiff's demand for trial by jury is not an averment of fact to which  
19 a response is required.

20  
21 3.1 Virtools Canada admits that, on or about August 25, 2004, it entered  
22 into a contract with SII to develop an insect character controller building block for  
23 SII. Virtools denies that it entered into any such contract with SII. Virtools  
24 Canada admits that it agreed to develop a character controller building block to be  
25  
26

1 used by ARO Design in order to control insect characters within a game being  
2 designed by ARO for SII, which game was code named "POD".  
3

4 3.2 Virtools Canada agrees that the price for its work was \$32,000.00  
5 U.S. Virtools Canada denies the implied averment that it promised to develop the  
6 building block and source code within 8 weeks of August 25, 2004.  
7

8 3.3 Virtools Canada agrees that all of the intellectual property rights of  
9 the development are owned by Virtools Canada. Virtools Canada denies that "all  
10 rights to use the intellectual property were owned by Sterling." Instead, the  
11 contract expressly limits SII's ownership to "the rights to use the development  
12 and/or BB and source code."  
13

14 4.1 Defendants reassert their responses to the preceding paragraphs by  
15 this reference.  
16

17 4.2 Virtools Canada admits that approximately 19 months elapsed  
18 between August 2004 and the date SII filed its complaint. Virtools Canada denies  
19 that it failed to fully deliver the agreed character controller building block and  
20 related source code to SII (actually, ARO Design), denies that it breached the  
21 parties' contract, and denies that SII has incurred any legally compensable  
22 damages as a consequence of any act or omission by Virtools Canada in this  
23 regard.  
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DEFENDANTS' ANSWER, AFFIRMATIVE DEFENSE  
AND COUNTERCLAIM - 3  
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1           4.3 Defendants deny that they disseminated the character controller  
2 building block and source code, or anything else owned by SII under the terms of  
3 the parties' contract, on the Virtools web site. Defendants deny that anyone  
4 downloaded any information or property in which SII has an ownership interest  
5 from Defendants' web site. Defendants deny that the sole and exclusive right to  
6 use the "intellectual property" was owned by SII, and asserts that the contract  
7 speaks for itself and expressly provides that Defendants retain ownership of the  
8 intellectual property developed under the agreement, limiting SII's interest to "the  
9 rights to use the development and/or BB and source code." Virtools Canada  
10 denies that it breached the parties' contract, and denies that SII has incurred any  
11 legally compensable damages as a consequence of any act or omission by Virtools  
12 Canada in this regard.  
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17           5.1 Defendants reassert their responses to the preceding paragraphs by  
18 this reference.  
19

20           5.2 Defendants deny that the Character Controller, the building block  
21 and/or the source code is Sterling's trade secret.  
22

23           5.3 Defendants deny that they disclosed and disseminated the character  
24 controller building block and source code, or anything else owned by SII under  
25 the terms of the parties' contract, on the Virtools web site.  
26

1           5.4 Defendants deny that they owed any duty to SII to maintain the  
2 secrecy of anything.

3  
4           5.5 Defendants deny that they violated the Washington Trade Secrets act,  
5 and deny that SII has incurred any legally compensable damages as a consequence  
6 of any act or omission by either of them in this regard.

7  
8           6. Any averment of fact, express or implied, that is not specifically  
9 addressed above is denied.

10                           **AFFIRMATIVE DEFENSES**

11           1. Although Defendants deny that Virtools Canada breached the  
12 development agreement's delivery term, Plaintiff's claim for any such breach is  
13 barred by the parties' accord regarding the delivery term, and Virtools Canada's  
14 satisfaction of that accord.

15           2. Although Defendants deny that Virtools Canada breached the  
16 development agreement's delivery term, Plaintiff is estopped to assert a claim for  
17 any such breach.

18           3. Although Defendants deny that Virtools Canada breached the  
19 development agreement's delivery term, Plaintiff waived the right to assert a  
20 claim for any such breach.

21           4. Plaintiff's claim for any alleged breach of contract is barred by its  
22 own material failure to perform in accordance with the contract.

23           5. Plaintiff's complaint fails to aver facts which would support a claim  
24 for relief under the Washington Trade Secrets Act.

25                           **COUNTERCLAIMS**

26  
DEFENDANTS' ANSWER, AFFIRMATIVE DEFENSE  
AND COUNTERCLAIM - 5  
Case No. CV-06-059-AAM

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1           1.     Plaintiff has failed and refused to pay Virtools Canada the balance  
2     due under the development agreement, in the amount of \$16,000, despite delivery  
3     of the character controller building block and source code to ARO Designs, and  
4     acceptance by ARO, in breach of the parties' contract.

5           2.     Plaintiff's claim of misappropriation under the Washington Trade  
6     Secrets Act is made in bad faith, such that Defendants should be awarded their  
7     reasonable attorneys' fees in defense of that claim.

8                               **PRAYER FOR RELIEF**

9           Wherefore, Defendants pray for judgment in their favor against Plaintiff's  
10    complaint and all claims therein, and for an award of money damages on Virtools  
11    Canada's claim for breach of contract, plus pre-and post judgment interest  
12    thereon, and for an award of Defendants' reasonable attorneys' fees in defense of  
13    Plaintiff's trade secrets claim, and for such other and further relief as the Court  
14    deems just, at law and in equity.

15  
16           DATED this 31<sup>st</sup> day of July, 2006.

17  
18                               FOSTER PEPPER PLLC

19                               /s/  
20                               JOHN RAY NELSON, WSBA #16393  
21                               Attorneys for Defendants

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26           DEFENDANTS' ANSWER, AFFIRMATIVE DEFENSE  
          AND COUNTERCLAIM - 6  
          Case No. CV-06-059-AAM

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          SPOKANE, WASHINGTON 99201 ♦ 509-777-1600

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2  
3 **CERTIFICATE OF SERVICE**

4 I, Pam McCain, certify that on July 31<sup>st</sup>, 2006, I electronically filed the  
5 foregoing with the Clerk of the Court using the CM/ECF System, which will send  
6 notification of such filing to the following:

7 Timothy M. Lawlor

8 Shelley N. Ripley

9 I declare under penalty of perjury under the laws of the state of Washington  
10 that the foregoing is true and correct.

11 Signed at Spokane, Washington, this 31<sup>st</sup> day of July, 2006.

12 s/ Pam McCain

13 Pam McCain  
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